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978-1-107-01592-0 - The International Law of Migrant Smuggling

Anne T. Gallagher AO and Fiona David

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THE INTERNATIONAL LAW OF MIGRANT SMUGGLING

Whether forced into relocation by fear of persecution, civil war, or humanitarian crisis, or pulled toward the prospect of better economic opportunities, more people are on the move than ever before. Opportunities for lawful entry into preferred destinations are decreasing rapidly, creating demand for a range of services that is increasingly being met by migrant smugglers: individuals or criminal groups who facilitate unauthorized entry into another country for profit.

This book, a companion volume to the award-winning *The International Law of Human Trafficking*, presents the first-ever comprehensive and in-depth analysis of the international law of migrant smuggling. The authors call on their direct experience of working with the United Nations to chart the development of new international laws and to link these specialist rules to other relevant areas of international law, including law of the sea, human rights law, and international refugee law. Through this analysis, the authors identify and explain the major legal obligations of States with respect to migrant smuggling, including those related to criminalization, interdiction and rescue at sea, protection, prevention, detention, and return.

Anne T. Gallagher AO is a lawyer, practitioner, teacher, and independent scholar with an established reputation in international affairs, particularly in human rights and the administration of criminal justice. She is a former United Nations Official (1992–2003) and was Special Adviser to Mary Robinson, the UN High Commissioner for Human Rights and former president of Ireland, from 1998 to 2002. In that capacity Dr. Gallagher participated directly in the development of the new international legal framework around transnational organized crime including the Migrant Smuggling Protocol. She continues to advise the United Nations and since 2003 has led a high-profile intergovernmental initiative that aims to strengthen legislative and criminal justice responses to human trafficking and related exploitation in South East Asia. According to the U.S. government, Dr. Gallagher is “the leading global authority on the international law on human trafficking.” She is the author of many publications, including *The International Law of Human Trafficking*, which was awarded the 2011 American Society of International Law Certificate of Merit – Honorable Mention.

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32 Avenue of the Americas, New York, NY 10013-2473, USA
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www.cambridge.org
Information on this title: www.cambridge.org/9781107015920

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First published 2014
Printed in the United States of America

A catalog record for this publication is available from the British Library.
Library of Congress Cataloging in Publication data
Gallagher, Anne T., author.
The international law of migrant smuggling / Anne T. Gallagher, Fiona David.
p. cm.

Includes bibliographical references and index.
ISBN 978-1-107-01592-0 (hardback)
1. Human trafficking. 2. Human trafficking – Prevention – International cooperation. 3. Human smuggling. 4. Emigration and immigration law.
5. Refugees – Legal status, laws, etc. 6. Human rights. I. David, Fiona, author. II. Title.
KZ7155.G357 2014
345'.0237–dc23 2013040596

ISBN 978-1-107-01592-0 Hardback
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From the perspective of international law, any Government of a sovereign State, as a general rule if it deems necessary in its own interest, has the right to admit or not admit and to expel or not expel aliens who wish to enter or who reside in its territory, as well as to impose conditions on their entry or residence if it deems it necessary in the interest of its tranquility or domestic or international security, or of the health of its inhabitants.

Rolin-Jaquemyns, “The Right of Expulsion of Aliens,” *Annuaire de l’Institut de droit international*, vol. X (1888–1889),
Lausanne session, p. 235

What men, what monsters, what inhuman race,
What laws, what barbarous customs of the place,
Shut up a desert shore to drowning men,
And drive us to the cruel seas again?

Virgil, *Aenid I*, 539–540, Dryden’s translation 1 (760–763),
cited in Grotius, *The Freedom of the Seas* (1633)

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Cambridge University Press

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Cambridge University Press
978-1-107-01592-0 - The International Law of Migrant Smuggling
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